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19 **UNITED STATES DISTRICT COURT**  
20 **NORTHERN DISTRICT OF CALIFORNIA**  
21 **OAKLAND DIVISION**

22  
23 ZOMM, LLC,

24 Plaintiff,

25 v.

26 APPLE INC.,

27 Defendant.  
28

Case No. 4:18-cv-04969-HSG

**JOINT MOTION AND ORDER FOR  
ENTRY OF FINAL JUDGMENT**

Judge: Haywood S. Gilliam, Jr.

JOINT MOTION FOR ENTRY  
OF FINAL JUDGMENT  
4:18-CV-04969-HSG

1 WHEREAS, on April 23, 2019, Zomm filed a Complaint asserting a First Cause of Action  
2 for alleged infringement of U.S. Patent No. 8,351,895 (“’895 Patent”), a Second Cause of Action  
3 for alleged breach of contract, and a Third Cause of Action for alleged unfair competition (ECF  
4 1);

5 WHEREAS, on October 3, 2018, Zomm filed an Amended Complaint asserting a First  
6 Cause of Action for alleged infringement of the ’895 Patent, a Second Cause of Action for alleged  
7 breach of contract, and a Third Cause of Action for alleged unfair competition (ECF 37);

8 WHEREAS, on November 9, 2018, Apple filed two IPR petitions challenging the  
9 patentability of all claims of the sole asserted patent in this action, the ’895 Patent;

10 WHEREAS, on December 3, 2018, Apple filed a Motion to Dismiss and Stay (ECF 45);

11 WHEREAS, on May 10, 2019, the U.S. Patent Trial and Appeal Board (“PTAB”) issued  
12 decisions instituting review of both IPR petitions;

13 WHEREAS, on June 17, 2019, the Court granted Apple’s motion and dismissed without  
14 prejudice Zomm’s non-patent causes of action and stayed the patent cause of action pending IPR  
15 (ECF 81);

16 WHEREAS, on July 17, 2019, Zomm filed a Second Amended Complaint asserting a  
17 First Cause of Action for alleged infringement of the ’895 Patent and a Second Cause of Action  
18 for alleged breach of contract (ECF 84);

19 WHEREAS, on September 24, 2019, pursuant to stipulation, the Court dismissed with  
20 prejudice the Second Cause of Action (Breach of Contract) in Zomm’s Second Amended  
21 Complaint (ECF 93);

22 WHEREAS, on May 7, 2020, the PTAB issued Final Written Decisions in both IPRs  
23 finding all claims of the ’895 Patent unpatentable and denying Zomm’s motion to amend certain  
24 claims;

25 WHEREAS, on July 9, 2020, Zomm filed notices of appeal of the PTAB’s Final Written  
26 Decisions in both IPRs, and on July 16, 2020, the United States Court of Appeals for the Federal  
27 Court (“Federal Circuit”) docketed Zomm’s appeals (Appeal Nos. 2020-2000, 2020-2002);

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1 WHEREAS, on July 13, 2020, the Court stayed this action until resolution of both appeals  
2 (ECF 101);

3 WHEREAS, on April 9, 2021, the Federal Circuit issued a summary affirmance pursuant  
4 to Fed. Cir. R. 36, affirming the PTAB's Final Written Decisions;

5 WHEREAS, on May 17, 2021, the Federal Circuit issued its Mandate to the PTAB in  
6 accordance with the judgment and awarded costs to Apple;

7 THEREFORE, consistent with the Federal Circuit's decision, Zomm and Apple jointly  
8 request that the Court enter a final judgment pursuant to Rule 58(b) of the Federal Rules of Civil  
9 Procedure in favor of Apple and against Zomm as follows:

- 10 1. All claims of U.S. Patent No. 8,351,895 are invalid.
- 11 2. Zomm's Second Amended Complaint is dismissed with prejudice; and
- 12 3. Each party shall bear its own costs, expenses, and attorneys' fees.

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14 A proposed form of judgment accompanies this Motion.  
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1 Dated: September 8, 2021

2  
3 **O'MELVENY & MYERS LLP**

4 /s/ Luann L. Simmons  
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Attorneys for Plaintiff  
ZOMM, LLC

**CERTIFICATE OF SERVICE**

I certify that all counsel of record is being served on September 8, 2021, with a copy of this document via the Court's CM/ECF system.

Dated: September 8, 2021

**O'MELVENY & MYERS LLP**

By: /s/ Luann L. Simmons  
Luann L. Simmons

Attorney for Defendant Apple Inc.

**FILER'S ATTESTATION**

Pursuant to Local Rule 5-1(i)(3), I hereby attest that the other signatory listed, on whose behalf the filing is submitted, concurs in the filing's content and has authorized the filing.

Dated: September 8, 2021

**O'MELVENY & MYERS LLP**

By: /s/ Luann L. Simmons  
Luann L. Simmons

Attorney for Defendant Apple Inc.

**FINAL JUDGMENT**

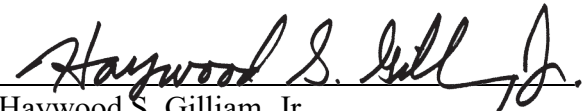
Before the Court is the Joint Motion for Entry of Final Judgement filed by Zomm, Inc. (“Zomm”) and Apple Inc. (“Apple”) in the captioned case. For the reasons stated in the Joint Motion and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT final judgment be and is hereby entered in favor of Defendant Apple Inc. and against Plaintiff Zomm, Inc. as follows:

1. All claims of U.S. Patent No. 8,351,895 are invalid.
2. Zomm’s Second Amended Complaint is dismissed with prejudice; and
3. Each party shall bear its own costs, expenses, and attorneys’ fees.

**IT IS SO ORDERED**

DATED: 9/9/2021

  
Haywood S. Gilliam, Jr.  
United States District Court Judge